

Deficiency Progress Report – Update 3

Report Submitted: September 3, 2009

CUPA: Contra Costa County Health Services (CCHMP)

Evaluation Date: November 18 and 19, 2008

Evaluation Team:

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Corrected Deficiencies: none

Next Progress Report (Update 4) Due: January 13, 2010

Please update the deficiencies below that remain outstanding.

1. **Deficiency:** The CUPA is reviewing its Inspection and Enforcement (I and E) Plan annually, but it has not updated the plan as needed.

Examples:

- The I and E plan contains a scheduled inspection frequency of 3 years for Underground Storage Tanks (USTs) facilities.
- The I and E plan does not include the enforcement option “Red Tag” even though Red Tag is used.
- The I and E plan contains incorrect citations.

Preliminary Corrective Actions: By May 31, 2009 (***changed from February 19, 2009***), the CUPA will update its I and E plan.

Along with the first progress report, submit the CUPA’s updated I and E plan to Cal/EPA.

CUPA’s 1st Update (2-17-09): CCHMP addressed the first two deficiencies listed above. The inspection frequency listed in, *Facility Inspections – Underground Storage Tanks* has been changed to *annually* (page 1). Additionally, an addendum was added to that policy that addresses the use of red tags.

CCHMP is in the process of making significant changes to the administration of the Unified Programs. These changes will result in additional revisions to the I&E Plan including consolidating the multiple plans for each of the Unified Programs into one coordinated plan. CCHMP would like to correct the erroneous citations during the consolidation process. These revisions to the I&E Plan will be completed no later than May 31, 2009.

If requested by CalEPA, CCHMP will correct the erroneous citations as requested above by February 28, 2009.

Cal/EPA's 1st Response: Cal/EPA appreciates the CUPA's efforts to correct this deficiency. The CUPA may correct the erroneous citations in the I and E plan as a part of I and E consolidation process. The corrective action due date will be modified to reflect the CUPA's action.

By May 31, 2009, please email the I and E revision to Cal/EPA for review. Please refer to the SWRCB's response.

- **SWRCB's Response:** The State Water Board staff considers the portion of this deficiency for UST inspection frequency to be corrected. The red tag addendum fully describes how this enforcement tool is to be used. However, the enforcement portion of the inspection report does not reference red tags. Please see the comment under Deficiency 4 below.

CUPA's 2nd Update (5-18-09):

- CCHMP is on schedule to complete the update of the I & E Plan by May 31, 2009.
- During staff inspection trainings several issues arose that delayed completion of the revised inspection forms. Revisions to the inspection forms are now expected to be completed by May 31, 2009.
- Staff training on the new forms will be completed by June 18, 2009. CCHMP is in the process of moving office locations and would like to implement the new forms when the move is complete – expected in late July 2009. This extension will allow us to avoid printing the new forms with an address that will be outdated in a month.

Cal/EPA's 2nd Response: Thank you for the correspondences sent to Cal/EPA explaining the progress toward correcting this deficiency.

Please submit the CUPA's revised I and E plan to Cal/EPA along with the next progress report.

CUPA's 3rd Update (9-3-09): The third and final action necessary to address Deficiency #1 – update the UST regulatory citations – is not complete. As previously stated, the updated citations will be incorporated into a revised I&E Plan. However, at this time, the revisions have not been completed.

CCHMP is committed to completing the revisions to the I&E Plan however we feel that it is necessary to first establish a good foundation in which to build our programs. We experienced several delays with our revised enforcement process, determining how we will assign inspections, how we will review and assure quality inspections, and with the new inspection forms. Ultimately, these issues created delays with updating the citations.

Attached is a draft outline of our updated I&E Plan.

Cal/EPA's 3rd Response: The CUPA is working diligently to revamp its I and E plan to better service the CUPA and the county. Please contact Cal/EPA to set up a completion date for the I and E plan. Please refer to the SWRCB's response.

- **SWRCB's Response:** The provided outline looks to be on track for establishing an I & E Plan that covers the Unified program. On the next progress report, please update Cal/EPA and the SWRCB on the progress made towards correcting this deficiency. If the I & E plan is complete, please submit it along with your update.

2. **Deficiency:** Some of the required forms for the permit to operate are not found in the facility files. The forms that were missing include: monitoring plan, response plan, plot plan (not in any of the reviewed files); UST A & B forms, financial responsibility/CFO letters. Some forms are not for the current owner. Some of the forms are incomplete or lack signatures.

Preliminary Corrective Actions: In the future, the CUPA will ensure that UST facility files have the required paperwork. Also, the CUPA will ensure that the paperwork is complete and up-to-date.

CUPA's 1st Update (2-17-09): CCHMP is moving forward with the *Corrective Actions* outlined in the self-audit. This includes the following:

- Train/retrain staff on inspection basics
- Review and update inspection (HMBP, HWG, UST) forms
- Hold basic, refresher training on inspection (HMBP, HWG, UST) programs that includes the proper classification of violations
- Revise Enforcement Plan and hold enforcement training
- Develop a QA/QC review process for inspections
- Hold advanced training on inspection programs
- Revise the I&E Plan to reflect changes

At this time, CCHMP is reviewing the final draft of the *Inspection Basics* training course. Classes have been scheduled for February 26, 2009, and repeated on March 3, 2009. Additionally, the first draft of the revised, Enforcement Plan is complete and Program Leads are currently revising inspection forms.

Cal/EPA's 1st Response: Please refer to the SWRCB's response.

- **SWRCB's Response:** The State Water Board staff applauds CCHMP's steps to correct this deficiency. We request clarification as to how CCHMP will ensure that all information required on the revised UST forms will be collected. Does CCHMP intend to have UST facility owners complete the revised forms or will CUPA forms be revised to capture this new information? Also, State Water Board staff would like to review the revised UST inspection form when it is available.

CUPA's 2nd Update (5-18-09):

- Train/retrain staff on inspection basics – Completed. Classes held on February 2, 2009 & March 3, 2009.
- Review and update inspection (HMBP, HWG, UST) forms – Delayed. Staff is currently commenting on draft versions of the updated inspection forms - see Item 1, CUPA's 2nd Update.
- Hold basic, refresher training on inspection (HMBP, HWG, UST) programs that includes the proper classification of violations – Completed. UST class held April 9, 2009; HWG classes held April 21 & 22, 2009; HMBP classes held April 28 & 29, 2009.
- Revise Enforcement Plan and hold enforcement training – Delayed. After meeting with other Unified Program Agencies, CCHMP decided to completely revise our current Enforcement Plan. The new process would automatically direct some enforcement actions through the District Attorney's Office. CCHMP is currently using the existing enforcement process and is working with the District Attorney's Office to develop the new process. CCHMP will submit the proposed, new enforcement process with the updated I & E Plan on May 31, 2009.
- Develop a QA/QC Review Process for Inspections – Completed on May 1, 2009. Implementation to begin on June 1, 2009.
- Hold advanced training on inspection programs – On schedule. Topics currently under development. Training expected to occur in later this year.
- Revise the I&E Plan to reflect changes - On schedule. CCHMP is on schedule to complete the update of the I & E Plan by May 31, 2009.
- How will CCHMP ensure that all information required on the revised UST forms will be collected? – CCHMP will ensure all required information and documentation is submitted by UST facilities during compliance inspections. The revised UST inspection form will

assist inspectors determine what information and documentation may be absent from the file.

Cal/EPA's 2nd Response: Please refer to the SWRCB's response.

- **SWRCB's Response:** The State Water Board staff commends the CUPA for its efforts to train inspectors and update forms. Please forward a copy of the UST inspection form for review when it is available.

CUPA's 3rd Update (9-3-09): As previously stated, the revised I&E Plan is not complete.

CCHMP inspectors were not consistently obtaining the updated UST forms. Therefore on August 13, 2009, the UST Program Lead held a third training. During this training he reiterated that UST A & B forms, monitoring plans, and response plans must all be on the current forms. He instructed staff on the required, updated forms and what to review to determine a properly completed form.

Cal/EPA's 3rd Response: Please refer to the SWRCB's response.

- **SWRCB's Response:** Has the CUPA thought about creating a file review checklist? This could help staff review files and update as necessary. If the CUPA likes, the SWRCB can provide sample checklist gathered from other CUPA's or provide the checklist it uses for file review. Please let us know if you would like this assistance. On the next progress report, please report to Cal/EPA and the SWRCB the number of facility files that have all of the required and updated documents. If the CUPA would like to report this number sooner to help correct this deficiency, please contact the SWRCB.

3. **Deficiency:** The CUPA UST inspection report does not verify compliance with all requirements of Article 3 and 4, but consists of a report of violations only. All items that are in compliance are not part of the report.

Preliminary Corrective Actions: By June 19, 2009, the CUPA shall develop an inspection report format that identifies the requirements of Article 3 and 4, that when completed, documents compliance and non-compliance. Violation summaries and return –to-compliance forms for minor violations can still be used along with this as part of the complete report.

CUPA's 1st Update (2-17-09): In addition to revising inspection forms (see **Item 2**) CCHMP has been meeting with other CUPAs to gain insight

on their successes with implementing the Unified Programs. The revisions to the inspection forms, along with the associated staff training, are expected to be completed by May 1, 2009.

Cal/EPA's 1st Response: Please refer to the SWRCB's response.

- **SWRCB's Response:** The State Water Board staff is pleased that CCHMP is developing detailed guidance and training for UST inspectors. The inspection report that CCHMP submitted combines aspects of a procedures document and an inspection checklist. It is not clear to State Water Board staff how an inspector would use the inspection report to document compliance and, in particular, determine if the facility is in significant operational compliance for release detection and release prevention. The State Water Board staff would like to review several completed inspection reports and the associated facility documents (tank form, monitoring plan, etc.) to see how the inspectors verified compliance per Sec. 2712(c) before renewing the operating permit.

CUPA's 2nd Update (5-18-09): Staff is currently commenting on a draft version of the updated UST inspection form - see Item 1, CUPA's 2nd Update. CCHMP will forward the revised UST inspection form upon completion to the SWRCB. Additionally, upon implementing the new form, CCHMP will forward to the SWRCB several completed inspection reports and the associated facility documents to show how inspectors verify compliance.

Cal/EPA's 2nd Response: Please refer to the SWRCB's response.

- **SWRCB's Response:** Please see response to Deficiency 2.

CUPA's 3rd Update (9-3-09): As previously stated, the revised UST inspection form is not complete. The form has gone through several drafts and the final draft will be completed by November 1, 2009.

CCHMP inspectors were not consistently indicating SOC during UST inspections. Therefore on August 13, 2009, the UST Program Lead held an additional training. During this training he introduced a temporary, UST inspection form (attached) to track SOC. He also reviewed the requirements of SOC Detection and SOC Prevention.

Cal/EPA's 3rd Response: Please refer to the SWRCB's response.

- **SWRCB's Response:** The temporary fix submitted by the CUPA is a start to help with tracking and reporting SOC compliance during an annual UST compliance inspection. On the next progress

report, please submit the new and improved Contra Costa UST inspection checklist. If the CUPA would like the SWRCB to review the checklist prior to the next progress report, please let us know.

4. **Deficiency:** The CUPA is not exercising a graduated series of enforcement against some UST and hazardous waste generator facilities cited for chronic and/or severe violations. Chronic and/or severe violations are not escalated to formal enforcement. Example:
- Eagle Gas had two instances of raised sensors noted at prior inspections, but, no formal enforcement was initiated, and at the 11/17/08 inspection raised sensors were again found.
 - At Top Gas and Food, raised sensors was cited, but no formal enforcement was initiated.
 - The VA Hospital of Northern CA did not properly characterize, label, and dispose of chemotherapy waste which was offered to an unlicensed transporter. No formal enforcement was initiated.

Preliminary Corrective Actions: In the future, the CUPA will exercise a graduated series of enforcement on facilities that have chronic and/or severe violations.

The CUPA will refresh staff knowledge of the definitions of Class I, Class II and minor violations. A good tool for refresher training may include covering the Cal/EPA "Violation Classification Guidance Document for Unified Program Agencies," which is available on the Cal/EPA website under Unified Program - Publications and Forms.

By May 1, 2009 (***changed from February 19, 2009***), the CUPA will provide violation determination training to its inspectors.

CUPA's 1st Update (2-17-09): CCHMP outlined a process to improve our administration of the Unified Programs (see **Item 2**). We felt the need to reestablish a firm foundation on which to build consistency and coordination and therefore will not meet the February 19, 2009, timeframe. The inspection training scheduled for February 26, 2009, and repeated on March 3, 2009, will briefly address classifying violations but will not be program specific. Before May 1, 2009, CCHMP will hold basic, refresher training on each inspection (HMBP, HWG, UST) program that includes the proper classification of violations.

Cal/EPA's 1st Response: Cal/EPA appreciates the CUPA's efforts to correct this deficiency. The CUPA is providing violation classification training; however, the staff will not complete the training until May 1, 2009. The corrective action due date will be modified to reflect the CUPA's action. Please continue to train CUPA staff in the classification of violations and on the proper enforcement actions to take based on the

severity of the violations. Please contact Asha Arora at 510-540-3874 if you require classification and/or enforcement assistance regarding HWG violations. Please refer to the SWRCB's response.

- **SWRCB's Response:** As mentioned above for Deficiency 4, the State Water Board staff is pleased that CCHMP is developing detailed guidance and training for UST inspectors. The inspection report that CCHMP submitted does not show how the inspector will classify any identified violations as minor, Class I or Class II; nor does it mention red tags as a consequence of non-compliance. Our review of completed inspection reports will show us how CCHMP is ensuring that inspectors are consistently citing and tracking violations.

CUPA's 2nd Update (5-18-09):

- The Inspection Basics training held in late February and early March established a standard for proper inspection documentation that included violation classifications. The program-specific training classes that later occurred in April further addressed the details of classifying violations for the UST, HMBP & HWG programs. The UST training covered the use of Red Tags for significant non-compliance.
- The revised inspection forms will all contain a specific area to document the classification of each violation. Staff is currently commenting on draft versions of the revised inspection forms - see Item 1, CUPA's 2nd Update.
- CCHMP is currently revising the enforcement process to include additional coordination with the District Attorney's Office - see Item 2, CUPA's 2nd Update.
- Additionally, on June 1, 2009, CCHMP will begin implementing an inspection review process to ensure violations are properly documented and classified.
- CCHMP is implementing inspector training, an improved enforcement process and an inspection review process to make sure a graduated series of enforcement is taken against businesses with chronic and/or severe violations.

Cal/EPA's 2nd Response: Please refer to the SWRCB's response.

- **SWRCB's Response:** The State Water Board is pleased that the CUPA has developed an improved enforcement process. Please forward several completed inspection reports containing this added detail on enforcement for review.

CUPA's 3rd Update (9-3-09): On August 1, 2009, CCHMP assigned a Hazardous Materials Specialist as the Enforcement Coordinator. This person is responsible for revising the enforcement process as well as assisting the inspection staff with complex enforcement activities (the responsibilities of the Enforcement Coordinator are attached).

The revised enforcement process is expected to be less burdensome and confusing for inspection staff. The revisions, made in coordination with the Contra Costa District Attorney's Office and County Counsel, are expected to make overall enforcement activities more consistent.

At this time, the revisions to the enforcement process and inspection forms are not complete. An outline for the enforcement process is included in the draft outline for the I&E Plan. Revisions to the enforcement process will be completed by the next update. The updated inspection forms will also be completed by that time.

Cal/EPA's 3rd Response: Please refer to the SWRCB's response.

- **SWRCB's Response:** The CUPA is making great strides towards correcting this deficiency. As mentioned above, on the next progress report, please update Cal/EPA and the SWRCB on the progress made towards correcting this deficiency. If the I & E plan is complete, please submit it along with your update.

5. **Deficiency:** The CUPA issues UST operating permits based on fee payment and not compliance.

Preliminary Corrective Actions: By June 19, 2009, the CUPA shall develop a written procedure as part of the I and E plan to ensure that a UST facility is in compliance before issuing the Permit to Operate.

CUPA's 1st Update (2-17-09): CCHMP is developing a written procedure that will require UST Operating Permits to be reviewed prior to mailing. Permits from UST facilities that have outstanding violations would be manually removed by staff and held pending compliance.

CCHMP is looking towards changing data management systems. The new system will be able to automatically withhold a permit until a business comes into compliance.

Cal/EPA's 1st Response: Please refer to the SWRCB's response.

- **SWRCB's Response:** CCHMP is taking appropriate steps to correct this deficiency. The State Water Board would like to review the written procedure when it is final.

CUPA's 2nd Update (5-18-09): This policy is being incorporated into the updated I & E Plan. Revisions to the Plan are expected to be completed by May 31, 2009.

Cal/EPA's 2nd Response: Please refer to the SWRCB's response.

- **SWRCB's Response:** The State Water Board staff would like to review this policy when it is available.

CUPA's 3rd Update (9-3-09): Attached is the CCHMP procedure that outlines the process for withholding Annual Business Authorization/Permits from facilities with outstanding UST violations. The letter that was sent to these UST facility owners/operators is also attached.

Cal/EPA's 3rd Response: Please refer to the SWRCB's response.

- **SWRCB's Response:** CCHMP is taking appropriate steps to correct this deficiency. The State Water Board would like to review the written procedure when it is final.